

1 and that he shot and killed Mark McDonald, and after
2 doing that he ran up to him and he robbed him, he took
3 his wallet. He got 5 dollars. Five dollars for killing
4 Mark McDonald. The firearm, again, there was testimony
5 from Bud Haemmerle that it was operational.

6 Count Four, aggravated
7 robbery. This count relates to Richard Blazer. On or
8 about June 22d, 1992, in Montgomery County, Ohio, Weston
9 Lee Howe, Junior, again identified in this courtroom, in
10 attempting or committing a theft offense or in fleeing
11 immediately after such attempt or offense, did have a
12 deadly weapon, a firearm, on or about his person or
13 under his control.

14 And you heard testimony
15 that earlier in the afternoon of June 22d, 1992, that he
16 planned with Tony Elofskey and Walter Polson to go out
17 to Richard Blazer's house at 1912 Tennyson and rob him.
18 They worked together to go out there. And the testimony
19 was that you heard that he had again the 25 caliber
20 Bryco semiautomatic handgun, the black gun. And that he
21 had it on or about his person. The testimony was that
22 he fired the gun that killed Richard Blazer. Again, Bud
23 Haemmerle testified that the handgun was fully
24 operational, that it worked.

25 Count Five, aggravated

1 burglary. This count relates to Richard Blazer. On or
2 about June 22d, 1992, again, in Montgomery County, Ohio,
3 Weston Lee Howe, Junior, the defendant in this case, who
4 was also identified from the stand, by force, stealth,
5 or deception with purpose to commit a theft offense
6 there, did trespass in an occupied structure and that
7 being the residence at 1912 Tennyson where Richard
8 Blazer was present.

9 We know that earlier in the
10 afternoon on June 22d, 1992, that Tony Elofskey called
11 Richard Blazer and he told him he wanted to bring over
12 Tommy, Walter Polson; but he didn't tell him his real
13 name. He told him it was Tommy. He wanted to keep
14 Walter Polson's identity secret.

15 And it was planned, there
16 was testimony, that the three of them talked, Walter
17 Polson, Tony Elofskey, and Weston Lee Howe, Junior,
18 about how they would go out there and rob Richard Blazer
19 under the pretense of going out socially to Richard
20 Blazer's home. The three of them go out there.

21 And when they get there,
22 Weston Lee Howe, Junior, remains outside while Tony
23 Elofskey and Walter Polson go inside. There is an
24 argument. Richard Blazer comes outside and he's shot
25 and killed. He was certainly home at that time when

1 this happened. He was present. It was his residence.
2 Weston Lee Howe, Junior, did not go inside that
3 residence but under the deception to get out there for
4 reasons other than what Mr. Blazer thought they were
5 coming out there for, acting in concert with Tony
6 Elofskey and Walter Polson, encouraging them in their
7 plan, working with them. He didn't need to. He was
8 equally responsible. They would have never gotten into
9 that house if Richard Blazer knew the truth.

10 This count also carries
11 with it a firearm specification. That being that the
12 gun that Weston Lee Howe, Junior, had on or about his
13 person, was operable. And Bud Haemmerle came in here
14 and he told you that it was fully operational, that
15 being the 25 caliber semiautomatic Bryco, which was the
16 black gun you saw in here.

17 After listening to almost a
18 week and a half of testimony, I'm confident that when
19 you go back and deliberate, that you will think about
20 all the facts that the State has proved beyond a
21 reasonable doubt and you will come back with a guilty
22 verdict on each and every count and the firearm
23 specifications.

24 Thank you.

25 THE COURT:

Mr. Arntz.

1 MR. ARNTZ: Good morning, ladies and
2 gentlemen. I want to begin by thanking you for your
3 time and your attention and your patience. I do mean
4 patience because you have listened and watched, all of
5 you, for over seven days now and that's a long period
6 of time to be paying the kind of close attention that
7 you folks have been paying attention to this. And
8 Mike Monta and I have watched you, frankly, as you
9 watched us and we feel, frankly, that we have the best
10 group of 12 people we could possibly have for this
11 case. We think you're going to give us a fair shot
12 and that's all we can ask of you. So I'm thanking you
13 in advance for what you're about to do. You are going
14 to make five very difficult decisions, every one of
15 you. And we feel good about the fact that you're
16 going to do this the right way.

17 And then I should next say
18 to you very quickly, I know myself well enough to know
19 anyone who spent seven or eight days with me, may have
20 been offended by something I may have said or done in
21 this courtroom. And if that has happened, I want to
22 apologize to you right now, because I've done the best
23 I can, I hope. All I can tell you, this kind of a
24 case has a lot of pressure and a lot of stress. And I
25 think I've had the best co-counsel that I could have.

1 And I hope we've done the best job for our client,
2 Lee, any lawyers could do. So if something has
3 happened you didn't like, please hold it against me
4 and not against Lee Howe.

5 Ladies and gentlemen, as
6 you all know, when I sit down, the defense is done. I
7 can't get up again. And when I sit down, the
8 prosecutor is going to get up. And he's going to talk
9 to you and he's going to reply in some way to the
10 things I'm about to say to you. I think if I asked
11 each and everyone of you, every one can tell me why it
12 happens that way; because we talked about this. And
13 you told me you understood that he gets the last word
14 because in this country and in this state, the law
15 says that he has the duty and the job and the
16 obligation to prove each and every one of these
17 things, if he can, beyond a reasonable doubt. And you
18 remember that Mike Monta and I need not prove anything
19 to you in this or, or in any other trial. That's the
20 law. And that's why he goes last. And so when he
21 speaks, you understand I might like to jump up and
22 say, Mr. Prosecutor, what about this, and don't leave
23 this out; that doesn't sound right to me. You might
24 wonder what I might want to say if I had the
25 opportunity to do because I never will.

1 I'm going to talk a little
2 faster and try to say a lot of things here very
3 quickly because there is a lot of material here and
4 those of you who think you made up your minds, please
5 give me another chance here just for a short time.
6 Listen to what I have to say.

7 Ladies and gentlemen, I
8 said to you that cross-examination would play a large
9 role and every other trial there would be objections.
10 And you know, I said that to you when we were picking
11 a jury for a reason, because I knew what kind of a
12 trial this would be. Because I knew how carefully
13 rehearsed those two guys would be, Tony and Walt. And
14 you were treated to a very prepared presentation by
15 those two young men who were testifying, desperately
16 to try to save their own skins. Some of you know
17 that. And I knew that I would have to cross-examine
18 them thoroughly and intensively to try to drag the
19 truth kicking and screaming out of them. And I did
20 the best I could to show you some things. And ladies
21 and gentlemen, if you feel I was nitpicking, you know
22 what, if you were seated next to me over at this table
23 instead of Lee, it wouldn't look like nitpicking to
24 you.

25 MR. SLAVENS: Objection, your Honor.

1 THE COURT: Sustain the objection.

2 MR. ARNTZ: When you're on trial for --

3 MR. SLAVENS: Objection to this, your
4 Honor.

5 THE COURT: Overruled at this point.
6 Go ahead, Mr. Arntz.

7 MR. ARNTZ: When you're on trial like
8 this trial, when the stakes are this high, you want
9 your defense lawyer to ask all those questions because
10 they're important. And if you listen to me for the
11 next few minutes, you will see that the clues to
12 really what happened here and the truth is something
13 that you will learn if you look at the fine details.
14 The details are awfully important in this case. And
15 if you study the details with me, you will come to one
16 fair conclusion and that is that the evidence shows
17 that the person who used the Bryco firearm and killed
18 those two men was Tony Elofskey. And that out at the
19 Monument and Findlay area, my client was not in that
20 car. And Richard Blazer's house, my client didn't
21 shoot anybody. And therefore, intended, never had the
22 specific intent that anybody be killed.

23 Now, ladies and gentlemen,
24 you're going to have instructions from the Court. One
25 of the things the Court will tell you that there is

1 two kinds of evidence, direct and circumstantial. And
2 what he will say about circumstantial evidence is
3 this. Circumstantial evidence is indirect evidence or
4 indirect proof, proof by inference from circumstances.
5 And the Court will tell you that if you look at the
6 circumstantial evidence and decide that it is equally
7 indicative of guilt or of innocence, in other words,
8 if the circumstances could lead you to conclude either
9 that he is guilty or not guilty because they weigh
10 equally, the law requires you to return a verdict of
11 not guilty. And that's the same law you took an oath
12 to follow as jurors. And you also will remember that
13 the counts here are separable. There are five
14 decisions to make, not one. And we'll get back to
15 that as well.

16 Something else the Court
17 will tell you is that there are certain tests for
18 credibility which you must use when you deliberate in
19 this case. And the Court will tell you what the tests
20 are. How do you decide when someone is telling you
21 the truth? Now, you folks by virtue of your ages and
22 who you are, have decided in the past when people were
23 telling you the truth. You know about human nature
24 and you can do it today, that's why we picked you.

25 And the first test for

1 credibility is the appearance or the manner of
2 testifying of each witness. You might think this is a
3 small thing. But don't you decide whether someone is
4 lying to you based upon how they appear in part?

5 And let me just suggest to
6 you, you saw two Walter Polsons, didn't you? The
7 Walter Polson you saw on that videotape was not the
8 same young man who came in here and testified, was he?
9 The Walter Polson you saw in that videotape was moving
10 slowly. He was slowed down. And if you paid enough
11 attention, his speech was slurred. And when he came
12 in here, he was trying to put on an academy award
13 performance. He was cleaned up. He was buffed and
14 polished like some kind of a stone.

15 And Tony Elofskey, his
16 appearance says an awful lot about him too. Do you
17 know he actually looked you folks in the eyes and he
18 told you he had deep feelings of remorse and regret in
19 this case. Do you remember that? If you have never
20 before seen a person without a conscious in this
21 world, you saw one when Tony Elofskey testified. And
22 he's probably one of the most dangerous people you
23 have ever seen in your entire life. And some of you
24 know it just from looking at him as he sat there.

25 And a second test for

1 credibility is candor or the lack of it. Can you tell
2 the truth? Can you admit things? And you saw
3 examples of how these two young men could not admit
4 simple and obvious things.

5 Walter, how did you meet
6 Tony? You all remember what he said? I met him in
7 school. Tony, how did you meet Walter? I met him in
8 jail where we were both serving sentences together. A
9 small thing. Does it indicate something about
10 credibility and believability? Walter, how often have
11 you been together with Tony? Oh, not very often, the
12 last two to three years. Tony, how long have you been
13 together with Walter? We lived together twice. We
14 lived together twice. Do you think Walter forgot
15 that? He didn't want you to know that. That's who
16 you're dealing with.

17 Walter, do you use drugs or
18 drink alcohol? Not me. I swore that alcohol off
19 January 1st, 1992. Tony, does Walter drink or do
20 drugs? Yes. That's what he said.

21 Walter, why do you carry a
22 loaded gun? To defend myself from my girlfriend's
23 fathers. Do you remember that? Tony, does Walter
24 carry a loaded gun? Not that I know of.

25 Walter, do you have that

1 loaded gun at the hospital? Yeah, I did. Tony, did
2 he have it? No, I didn't see any loaded gun there.

3 Now, ladies and gentlemen,
4 just a sample, just a sample, of some of the things
5 you were subjected to in the State's case. And I'm
6 talking now about how these two young men told you
7 very different stories about what happened. They both
8 say they were there. But they told you different
9 stories. What's an example?

10 The Mark McDonald case.
11 Walter Polson told you that Mark McDonald came to the
12 window of the car and talked five minutes. You
13 remember that? On the video he said, the next thing I
14 knew I heard gunshots. There was no conversation on
15 the video. Tony Elofskey said, Mark talked to us.
16 Now remember that because Tony claims that when Mark
17 came to the window, he didn't see anybody but Tony.
18 But on the video Tony said Mark talked to us. Who
19 would us be? Could be he and Walt? Are you with me?

20 Also, Tony testified that
21 Mark was shot as he walked up to the window. And if
22 he walked up to the window, there wouldn't have been a
23 conversation, could there? Small thing. Or is it a
24 clue?

25 What did Howe say before he

1 supposedly shot McDonald? According to Walt, I knew
2 he was shot. There wasn't anything said. But Walt
3 also says that Howe said now? now? Now, can I rob?
4 And fuck it. Tony said Walt -- Tony claimed that Lee
5 said, I want your money. Now there are four or five
6 different versions of whether Lee said something if he
7 was in that car and if so, what he said. Small thing?
8 Small things add up. They count for something.

9 What was Mark McDonald
10 doing when you left him, Walter? Well, when we left
11 the scene, he was up and staggering. Tony says he was
12 down. Small things? What can you believe?

13 In the Richard Blazer case,
14 Walter Polson said that he and Walter were out in the
15 car at the levy and Walter -- Tony was looking for
16 someone he knew. Now someone here remembers that? I
17 know you do. Looking for someone he knew. Tony
18 denies that. But the truth is, Tony was looking for
19 Richard Blazer.

20 Was there a discussion with
21 Richard Blazer? Why, yes. Walter says Blazer offered
22 money. Tony denies that. These two guys are supposed
23 to be in the same car at the same time hearing the
24 same thing.

25 What did Tony say when

1 Blazer left? We set up another one. Remember, Walt
2 finally admitted to that. Tony denied making that
3 comment and you know why, because that comment is a
4 very important clue to what really happened here.
5 We'll get back to that.

6 When Tony drove Walt home,
7 was Lee there? Walt testified that Lee wasn't there.
8 Tony said he was.

9 What was the plan at
10 Richard's house? Walter says the plan was that Walter
11 and Tony go into the house and leave Lee out in the
12 car. And then Tony is supposed to come out of the
13 house and Lee is supposed to go into the house. Why?
14 Well, you remember they say, if a homosexual saw three
15 people and two of them were strangers, he wouldn't
16 approach. He won't let them in. Well, now when
17 Richard saw Tommy, Tommy who was really Walter, Tommy
18 was a stranger to him, wasn't he? Does it make a
19 difference if Tommy, one stranger comes into his house
20 or Tommy and Lee, two strangers into his house? That
21 doesn't make sense. This plan doesn't make any sense
22 and you know it.

23 Tony doesn't even agree
24 that was the plan. Tony said the plan was to duct
25 tape Richard Blazer and leave him. But Tony also gave

1 you a version in which, which they were to duct tape
2 Blazer and take him to the Green Machine. Now which
3 was it? And if you want to believe this, I asked,
4 what were you going to do with Richard after you
5 gotten his money? Well, I don't know. Does anyone
6 believe that was the plan? They made that up. They
7 just made that up. They hadn't thought that through,
8 had they? What they want at Richard's house? Walter
9 told you. We wanted money for gas for cruising. And
10 someone here remembers that I asked Tony about that.
11 He denied it. He said we were there for a TV, a
12 stereo and a VCR. Are these two guys believable?
13 What did they do to get ready to go to Richard's
14 house?

15 Walter Polson, there's some
16 reason to believe he was on some kind of drug and we
17 will get back to that.

18 Tony said he drank a Bud, a
19 quart or something like that of Bud. And you know for
20 a fact he had two sets of clothing on before he went
21 over there. Two sets of clothing. What do you think
22 that was about? He told you it didn't mean a thing.

23 What happened when they got
24 there? Walter said, I stopped at the bushes and
25 urinated. Remember that? He said that on the video

1 and you saw it. But on the stand he said that was a
2 lie. And that's important because these people are
3 telling you that what Walter said on the video is the
4 truth. But he's admitting to you that he, he's still
5 lying on the video. Why is he still lying on the
6 video if the video is the truth?

7 Was there a discussion
8 inside Richard's house? Walter first said there was
9 an argument about money but later he said he took the
10 gun out just as soon as they came in. Tony denied
11 that there was an argument inside the house. What did
12 Walter say when the gun came out? He, first he said
13 he didn't say anything, then he said, he said don't
14 move. And Tony thinks Walter said, this is a robbery.
15 Can you trust these people?

16 How did Walter fire that
17 gun? Can you believe that he said to you it
18 accidentally went off? Does anyone here believe that
19 that gun accidentally went off? Any one of you? You
20 don't believe that. Tony told you that Walter said,
21 fuck you, when he shot that gun off. That's no
22 accident. Did Walter shoot Richard Blazer? Walter
23 doesn't say so but Tony told Detective Wade Lawson and
24 you heard Detective Lawson repeat it to you on the
25 witness stand that Walter shot Richard. Doesn't mean

1 it happened. But it means that Tony wanted Detective
2 Wade Lawson to believe that at one time.

3 All right. How did they
4 leave Blazer's house? Walter told you, and this is
5 important, that they all more or less left the same
6 time. And he told you Tony went out first, Richard
7 went out second, and Walter went out third but they
8 left in rapid order. Tony has a delay in his story.
9 The delay is, you will remember this, I asked Tony,
10 where were you when Richard was shot? He says, well,
11 I was all the way over on the outside of my car,
12 remember that, fumbling with the car keys, trying to
13 get into my car on the driveway when Richard was way
14 over there in the doorway of the front of his home.
15 And Walter hasn't even come out, out of the house yet.

16 You see what he's doing?
17 He's trying to get himself as far from Richard Blazer
18 as he possibly can at the moment Richard Blazer is
19 killed. Why is he doing that if he didn't shoot
20 Blazer?

21 What number of shots did
22 Lee supposedly fire at Blazer? Well, Walter said he
23 didn't know. He said he didn't know. That's what he
24 told Detective Wade Lawson in his interview. But
25 eight months later when he came into this courtroom to

1 testify, suddenly he knew. How did he know the other
2 day when he didn't know eight months ago? Because
3 he's read police reports; because people have talked
4 to him; because he knows what he's supposed to say.
5 That's how he knows now. You see what they're doing.

6 On that video you saw the
7 detective ask Walter Polson straight out, did your
8 brother, Lee, shoot Richard Blazer? Was it Lee who shot
9 Blazer? Did you see what he said, it should have been.
10 That wasn't a yes or no. See, he's hedging. Because
11 he's got to tell that story that Tony is telling that
12 his brother did this. And he doesn't want to say Tony
13 did it. We will get back to that.

14 What about that chase from the
15 scene? Walter was so scared he was giving directions,
16 remember that? At one point he told them that he had
17 given directions. Likewise, Tony was so scared he was
18 taking the route. You remember, he could describe to
19 you every street he turned on and where he turned left
20 and where he turned right. This completely panicked,
21 hysterical man, later after he hides out, he's the one
22 who gets away, he coolly strips off his outer clothing
23 and jogs down the, the street like he had nothing to do
24 with this.

25 Now that's not hardly a

1 complete list. I could go on for a while.

2 This is important. One thing
3 the prosecutor is going to say to you in a minute is
4 this, time and time again in the trial you will recall
5 he asked the detectives after Walt and Lee have been
6 arrested and Tony had gotten away, did Walt and Tony
7 have the opportunity to speak to each other. You
8 remember that question? He asked that several times.
9 The answer was always the same. When they split up
10 during that chase, that was the last time they saw each
11 other until they were in jail or in court. Why did he
12 ask you that question? Because he wants to stand up in
13 a few minutes and say to you, how could Walt and Tony's
14 stories been so similar if they were made up. And if
15 they were made up, when would they have the opportunity
16 to make those stories up. Okay. Well, the answer to
17 that is actually pretty simple. Because what happened
18 here is that Lee was never out at Monument and Findlay.
19 Walter and Tony did that first killing. And they talked
20 about it afterwards. And if they were ever going to be
21 caught, Lee was going to be in that car with them. And
22 he was going to be the fall guy and that was the plan.
23 And you know it because of the physical evidence, which
24 we'll get to in just a minute.

25 So they had the

1 opportunity. Remember, they rode together alone during
2 that day, the opportunity to get a story together about
3 the Mark McDonald killing. And that's why on my chart
4 there are fewer inconsistencies in the Mark McDonald
5 story than in the Richard Blazer story. You see, Tony
6 and Walt don't agree on so many things in the Richard
7 Blazer story because they didn't have the same
8 opportunity to try to get their story together like they
9 had after the McDonald killing. Do you follow me? They
10 brought Lee along to Blazer's house to have him there.
11 And he was going to be the fall guy again, and by God,
12 they made him a fall guy but their stories don't match
13 about Blazer and that's the clue, that's the clue. That
14 the first story about the McDonald killing is something
15 they cooked up between the two of them.

16 What is reasonable? The Court
17 will tell you another test for truthfulness is the
18 reasonableness of the testimony.

19 Let's talk about the McDonald
20 case. Is it reasonable that McDonald walks up to a car,
21 talks to the driver, doesn't see the other two people
22 for some unknown length of time and then Lee comes up
23 from under Tony's leg in the dark and reaches across?
24 And if we had that car, if they hadn't shredded it, you
25 could see this. Reaches across in front of Tony's

1 Elofskey face, and beyond that rearview mirror with the
2 air fresheners and the photos hanging from it, you will
3 see it in this photo, and in the dark after negotiating
4 between those two objects, fires three times and leaves
5 no gun powder residue. Is that likely? It's
6 improbable. It's not a very good way to try and kill
7 someone, is it? Is it more likely that Walter sat in
8 that front seat, the passenger side, Tony was the
9 driver. They both talked to Mark. Remember, Tony said
10 Mark talked to us. At the right moment Tony came up
11 with the gun and all he had to do is stick it right out
12 that window and fire it. That's why there is no gun
13 powder residue anywhere in that car because it was fired
14 right outside that window. And Mark McDonald, when he
15 saw that gun come up, started to step back, he said, oh.
16 Remember Tony said that on the video. And he got shot
17 first in the lip, that's the close shot, and then the
18 chest and the hands as he came back. Now is that more
19 reasonable than the story that would have Lee put Tony's
20 life in danger by firing the gun and shooting in the
21 dark all the way across the car? What do you think?
22 Reasonableness. And I asked them, why did you need Lee
23 there the first time? Why did you need three people to
24 rob the man in the dark? And they had no answer for
25 that, did they? Because there never was a third person

1 the first time. It was Walt and Tony that did that.

2 Likewise, on Blazer's case,
3 what is reasonable? Tony introduces Walt as Tom. Walt
4 has no idea why and doesn't ask him anything about it.
5 Tony says to Richard -- after he leaves, Tony says to
6 Walt, we just set up another one. And Walt doesn't have
7 any idea in this world what Tony meant by that and
8 doesn't ask him.

9 And the plan, the plan is
10 to duct tape, are you ready for this, a 273 pound man --
11 you saw him on the slide. They didn't bring any duct
12 tape -- and lead him out to the Mazda that Detective
13 Wade Lawson told you had two speakers in it and one or
14 more cabinets in the back. And you're going to stuff
15 that man in the back of that Mazda and all four people
16 are going to ride in that car and all that material in
17 that car. You remember when I began to press Tony on
18 that, he said, oh, we were going to take Richard's car.
19 That's the first time that story had ever been told from
20 June 23rd up to Monday of this week. Thinking fast.
21 He's just making it up as he goes along. That is
22 completely improbable. If you take Richard somewhere,
23 what do you do with him afterwards? It doesn't make
24 sense.

25 Likewise, when Tony said he

1 ran all the way to the driver door of his car before
2 Richard got out of his house, that doesn't make sense.
3 Walter says that they were going out more or less at the
4 same time with Tony in the lead, and that Richard was
5 shot as he was exiting. There is not enough time for
6 Tony's version to be true. Now, what is more likely?
7 What is more likely?

8 And you'll see it in one of
9 these diagrams. I won't take the time to find it but
10 there is a diagram, which I just found, Defendant's
11 Exhibit A. You will have this in the jury room with
12 you. This is a rough sketch prepared by Officer Bryant.
13 And there are the casings. Where are they? Way out
14 here in the front yard. Where did Walt and Tony tell
15 you that Lee was? Way up here in the corner by the
16 door.

17 So how did the, do the
18 casings get way down here, folks? How did that happen?
19 Because the person who shot Blazer was standing out
20 here. And who was the first person out that house, Tony
21 Elofskey, who ran out that door and right about here
22 turned and hit Blazer for the first time in the
23 collarbone while Blazer was standing on the step. And
24 as Blazer was hit, he turned and the second shot came in
25 and then the third shot came in. Now is that more

1 believable based upon that sketch, that diagram? And
2 that's why the casing in Tony's Mazda was found under
3 Tony's feet. You remember that? Photo is right there.
4 Because Tony fired the gun in the Mazda.

5 One more thing. There is a
6 fourth shot at Blazer which doesn't hit him. And you'll
7 find the casing and the spent bullet right there. It
8 lands under a bush or under a shrub right outside the
9 front door. If Lee is alongside the house and shooting
10 sideways as Blazer comes out, how does that fourth shot
11 end up down here under the shrubbery. The way it
12 happened is, again, the man who shot him was out here
13 and the fourth shot ricocheted somewhere on the house
14 and fell. And that's what makes sense. That's what is
15 reasonable.

16 And what's also reasonable
17 is that the shooter at Blazer's house was more likely
18 the driver or the front seat passenger. He had to be
19 the last person to get into the car. And Lee was riding
20 in the back seat. That's another clue. Now physical
21 evidence. Set aside everything I said and look at the
22 physical evidence because the physical evidence doesn't
23 fit their theory at all.

24 In the McDonald case,
25 again, if you could see the car, you would see how

1 difficult it would be to fire the way they claim Lee
2 fired.

3 Secondly, there is no
4 residue in that car and there is no residue on Tony's
5 clothing. They didn't try to find the clothing. They
6 didn't test it. Remember the residue fans out in all
7 directions. And they can't find any of it.

8 Thirdly, in the McDonald
9 case, this is another lie, and it's right here, and I
10 apologize to you for this photo, but there is no mud on
11 this young man's face. There is no dirt. There is no
12 mud. He's lying on his back and that's the way he was
13 found. That story that my client pushed his face down
14 in the mud, that's an absolute lie, something that Tony
15 and Walt came up with adding to the story. There is the
16 proof.

17 In the Blazer case the
18 distance of the shots is all wrong. You remember that
19 both Tony and Walt told you that Blazer was shot at
20 pointblank range. And the coroner told you that there
21 is no sooting, there is no scorching, there is no, at
22 that time, tattooing, which indicates a close up shot.
23 If I'm down on my knees right next to the front door as
24 the man comes out, it's going to be a close shot. The
25 physical evidence says it was not a close shot. It was

1 from way out there in the front yard where Tony, Tony
2 stood. Likewise, where is the shooter? Somewhere is
3 the shooter. If I'm down on my knees and Richard is
4 running out of the house, the shot goes up, the shot has
5 to be at an angle. What did the coroner say about the
6 angle of the entrance wounds? You all remember, he said
7 they were level. He said it was almost as if they came
8 parallel to the ground. Now how can, can that be true
9 if their story is true? The physical evidence doesn't
10 lie. If you had trouble deciding between Walt and Tony,
11 turn to the physical evidence. That doesn't lie. If
12 you go out in the front yard and turn and shoot, you're
13 shooting more level, aren't you? That's what the
14 physical evidence says. And remember what this
15 detective told you, he said that that front step was
16 approximately 8 inches high, which would elevate Blazer
17 even higher. If Lee were down on the ground on his
18 knees shooting up, it would be a very severe angle. It
19 can't be true.

20 The spent bullets and the
21 jacket. I've talked to you about where that was. It
22 was found in a place that doesn't make sense if the
23 shooter was right out the front door. And where the
24 guns were located after that chase right on Helena, if
25 you remember the testimony, Walter is running ahead of

1 Lee. And the guns are located close to each other near
2 the area where Walter was running. If Lee threw those
3 guns, he would have to throw them ahead of himself and
4 they would have to land near each other where Walter was
5 running. And that's not reasonable either.

6 Equal inferences. Listen
7 to what the Court tells you what you must do when the
8 circumstantial evidence is equally persuasive.

9 Interest and bias, that's
10 another way you can decide whether someone is telling
11 you the truth or not.

12 Now, ladies and gentlemen,
13 Detective Wade Lawson told you that he had a hunch, he
14 had a hunch based upon the homosexual connection that
15 these two homicides were connected. And he lied to
16 Walter Polson to try to make him open up and tell him a
17 story. And he did. Walter had a ready-made story, the
18 one that he and Tony had come up with after they shot
19 McDonald. And they talked back and forth until they got
20 another version of the Blazer case. They went out and
21 collected physical evidence, got it all here. And there
22 is nothing here, go through it, which says that Lee Howe
23 was at Monument and Findlay. There is nothing. And
24 they know it. There is a big gap in their case. And I
25 understand why they need a confession, that's why.

1 And you know, ladies and
2 gentlemen, we talked about this before, the job is to
3 spare no effort to convict. Spare no effort to convict.
4 And if this man was willing to tell them anything they
5 wanted to hear, all they had to say was, Lee, write that
6 out for me, will you, so we can show the jury. Push a
7 button on a tape recorder and say, now tell me again
8 what you just told me. But you, if you don't write
9 anything down, it's just words in the air.

10 It's time to quote Lincoln
11 again. Remember that calling it a fifth leg doesn't
12 make it so. And the, the fact you tell the same lie
13 again and again doesn't make it true. And it's the
14 easiest thing in the world, you know, that for a police
15 officer to come into a courtroom and say, you confessed
16 to me. You confessed to me. There is no evidence of
17 that, but he confessed to me. And you should demand
18 more than that. And the Court will give you an
19 instruction about what to do with that supposed
20 statement they say my client made putting himself at a
21 scene where there is no physical evidence that he was
22 even there.

23 And ladies and gentlemen,
24 if you are talking about interest and bias, you need to
25 remember one more thing. And that is what interest Tony

and Walt have in this case. And you remember, can the stakes be higher for them? They would die in prison if they didn't make this deal. And if they don't dance the dance, they lose the deal. What could be greater than that? This is the difference between them getting out in their life times and maybe not. And Tony has added up just how good this could get for him, 13 or 14 years I will be out on your streets again.

1 happen. And they tipped their hand when they told Tony
2 that Weston wasn't talking, so he better talk fast or
3 maybe they would make him the killer. That's the proof.
4 And the Court will instruct you as to how careful you
5 must be in weighing the testimony of co-conspirators.
6 Listen for that.

7 Ladies and gentlemen,
8 they're a team. Walter and Tony are a team. They're
9 long time friends. They met in jail. They lived
10 together. They're out doing stuff together. Tony told
11 you they're up shooting up the place. They shot out
12 windows. I think he said on an earlier occasion Tony's
13 girlfriend -- Tony's cousin is Walter's girlfriend.

14 Tony is a male hustler. He
15 knows Blazer. He knows the habits of homosexuals. He
16 sets up another one. He wore two sets of clothing. He
17 was the jogger. He already had his story together.
18 Remember when he was out there jogging home in that
19 other set of clothing, he was making up another story.
20 Because when he ran into Leon Lewis, he told him and
21 then he told the detectives that his car had been stolen
22 because his first plan was to say Walt and Tony (sic)
23 stole his car. See, and he tried to tell the detectives
24 that the first time too.

25 And you know, parts of the

1 truth came out again because he agreed that when he
2 talked to Leon Lewis, the guy who gave him the ride, he
3 made up the story that he and Walt was out robbing crack
4 dealers. See, the truth comes out no matter how well
5 you rehearse a story like they did. And Tony told Leon
6 that Walter, I'm sorry, Tony told Detective Wade Lawson
7 that Walter shot Blazer because that was his second
8 story he was going to put it on Walter. He ended up
9 putting it back on Lee, see. So it's Tony who knows
10 these people. He knows how to do this. He has the
11 reason. He has the motive. He's the leader of this
12 team. And that's why they're talking to Tony about
13 other murders in Dayton, Ohio, because he's the guy.
14 They chose the wrong guy. The shooter is the guy they
15 made the deal with.

16 And, ladies and gentlemen,
17 reasonable doubt is the same test or standard you use in
18 the most important of your own affairs when you buy a
19 house, decide who to marry or buy a car. If you went
20 home to your husband or wife and said, you know, I met
21 this guy who is trying to sell us something and he
22 admitted to me he committed perjury 10 or 11 times, he
23 swore lies under oath. He's asking us to trust him this
24 time. What would your husband or wife say?

25 And if you went to him or

1 her and said there's another guy, Walter Polson, who is
2 trying to sell us something and he made a commercial, he
3 made a film and he's denying what he said on that film
4 now, but don't worry about that, we can trust him too.

5 Would you buy even a car
6 from these guys? Would you buy a house from these guys?
7 Will you believe these guys with my client's life.
8 That's all we are asking.

9 And when you go back to
10 deliberate, just do what you told us you would do. This
11 is the most important day in my client's life. And if
12 it's his future that is at stake, at least give it the
13 time and attention and care that you would give to the
14 decision to buy a house or car or marry someone.

15 If your father or son or
16 your brother were on trial, give him the same concern

17 --

18 MR. SLAVENS: Objection to that,
19 personalizing nature --

20 THE COURT: Sustained.

21 MR. ARNTZ: And you will be tempted, I
22 think you will, to go home early. To be a temptation
23 to agree to get along to put an end to this. But you
24 have taken an oath and you know unlike the oath taken
25 by Walter and by Tony, you promised, you meant it when

1 you took your oath, they promised to tell the truth
2 but they didn't mean one bit of it. You promised to
3 do your job and you meant it at that time. So don't
4 take the easy way out. And if you're one of 12
5 people, if any one of you is one of 12 people back
6 there, don't you change your minds and don't you give
7 up, and don't you change your vote simply to agree
8 simply because that's better for you. Do what's right
9 for my client. Come to a decision with each other, if
10 you can. I don't know if you will be able to or not.

11 Remember that the counts
12 are separable. You make five different decisions each
13 and everyone of you. And you won't vote one way or
14 the other based upon a guess, a suspicion, a hunch, or
15 a feeling, you told me that. You would require that
16 they prove each and every bit of this beyond a
17 reasonable doubt. And the Court will tell you, unless
18 you were not just convinced but firmly convinced
19 beyond a reasonable doubt, the law requires you to
20 vote not guilty.

21 And I thank you one last
22 time for your time and attention. And we'll be
23 waiting for your verdict.

24 THE COURT: Mr. Slavens.

25 MR. SLAVENS: Thank you, your Honor.

1 Now you know when you were
2 all selected, we asked you to be fair and objective
3 'cause that's the purpose of this whole trial, to give
4 this defendant a fair trial.

5 And we submit to you that
6 as the Court has said, closing arguments are not the
7 evidence. The evidence is what you see, hear, and
8 what is presented to you from the witness stand. But
9 if you have to look at what is the theory of the
10 defense, you must analyze what he has just told you
11 and look at it for what it is and it's a 100 percent
12 total screen, a smoke screen.

13 Think about the validity of
14 his claim that Polson and Elofskey did the McDonald
15 homicide on their own and then later on that very same
16 day they take Weston Lee Howe out so he could become a
17 fall guy. Now who plans a robbery like that? Who is
18 going to say, well, Weston, you sit in the car and you
19 come with us, and you wear all your clothes, and we
20 are not going to give you any of the stuff we get from
21 the robbery. We are going to go in there and we are
22 going to get the VCR. We are going to get the TV.
23 And we are going to come back, put it in the car but
24 you ain't getting none of it. You just sit there and
25 you sit there in all your clothes and you sweat when

1 it's so hot out that night on June 22d when it's 61
2 degrees and he's wearing all of these clothes. That's
3 the theory of the defense.

4 Now, let me ask you the
5 same question that he has asked you. You going to buy
6 that stuff? I don't think so. I don't think you're
7 going to buy it because you're going to recognize that
8 the theory of their defense crumbles by its own weight
9 of ridiculousness.

10 Now, Mr. Arntz and
11 Mr. Monta, they have accused the police officers in
12 their questioning of being less than professional, of
13 being head hunters of going out and doing things that
14 I find the inference to be somewhat repulsive. They
15 picked on the prosecutor, I don't mind that. They can
16 pick on me all they want to. They picked on the
17 witnesses. They have tried to put the witnesses down.
18 What they haven't done is ask you though to look at
19 the true facts in this case, to be objective, to be
20 professional, to do your duty.

21 You know, I think if you
22 think about it, the police department in this case
23 deserves to be commended. They go back out to the
24 car, they look for a little shell casing and they find
25 it and then the defense throws it in the face of the

1 police department who found it. You know, yet the
2 next time they accuse the police officers of lying, of
3 fabricating confessions. You know, come on.

4 Then the police officers go
5 out and they go out to the car and they find a
6 notebook and then the same police officers are accused
7 of fabricating lies.

8 The police officer goes out
9 to the crime scene at Mr. Blazer's house and gets down
10 on -- the next day in daylight -- his hands and knees
11 and scrubs through and goes through that lawn and
12 rakes the lawn with his fingers and finds two casings.
13 What police department is going to do that if they're
14 going to come in and fabricate lies to you, these
15 officers and this police department. If you think
16 about it, they did an excellent job. What
17 have they done, they have gotten so far two convicted
18 murders off the street as we sit today in this
19 courtroom. Don't forget that.

20 You know, there's another
21 police officer that I think deserves credit in the
22 case and that's Lieutenant Steve Miller. Good friends
23 probably, at least a good neighbor of Mr. Blazer. And
24 but for the heroic act of Lieutenant Miller, these
25 three guys would have gotten away. If these three

1 guys had gotten away, what the hell did Polson and
2 Elofskey need with the fall guy? You know, that's the
3 theory of the defense. They're going to go out there
4 and get caught.

5 Folks, these three same
6 guys in the morning of the very same day, the three
7 same people in the same car and with the same killing
8 gun and I think it's almost like 15 hours of the
9 situation, are now back, not back, but are now at the
10 Tennyson address.

11 And yet this defendant will
12 have you believe that he was there at the Mark
13 McDonald's killing and the gun went off accidentally.
14 We are talking about a little 25 semiautomatic. All
15 you got to do is pull the trigger. And he's telling
16 this detective that he pulled the trigger three times,
17 once in the face, once in the hand, and once in the
18 chest, but it was an accident. You talk about
19 credibility. Look at his credibility and the
20 believability or lack of believability in that
21 statement. You're going to believe a guy like that
22 when he's talking to the police officers or you're
23 going to believe a police officer who was here and was
24 criticized by the attorney all the time. Use your
25 sense of logic, reason, and common sense as to the

1 McDonald situation for a moment. Who's telling the
2 truth, this detective or this man over there?

3 Now, again, keep your focus
4 on the facts. And don't forget that these guys went
5 there with the idea to rob Mr. Blazer.

6 They go in there -- call
7 him up, Tommy is coming over. This guy is in the back
8 seat, and it's unbelievable if you think about their
9 defense what the lawyer just said to you, he's going to
10 sit in the back seat.

11 Let's take a look at the
12 clothing he's wearing that night. A pair of a nice
13 light weight jean jacket. A pair of blue jeans, another
14 nice light weight article. A hood to cover up his head
15 with. A T-shirt, whatever other items that are in here.
16 A pair of gloves and whatnot. And you take a look.
17 They're going to have him sitting outside. He doesn't
18 know why he's sitting outside in the car, if you believe
19 his theory. Sweating, waiting but not going to get
20 anything that's going to come out of that house. Does
21 that make sense to you?

22 Now let's carry this theory
23 of the defense to another point. That if, yeah, we are
24 going to go in there and we are going to kill
25 Mr. Blazer, we are going to put it on you. I mean, you

1 know, let's take a look at what happens, what happened
2 after the chase. Well, before that. You know, take a
3 look at what this defendant said to the detective about
4 the Blazer situation. Remember, the detective indicated
5 that this defendant said, yeah, I was there but I had no
6 idea what was happening. Then the detectives pressed
7 him a little bit. They want to create lies, the
8 detectives. If you want to criticize the detective,
9 criticize him for pressing the defendant. They can
10 criticize me all they want, it doesn't bother me one
11 bit. And he says, yeah, now, yeah, I was there. I got
12 out of the car and I went up after the shooting to grab
13 this one guy's arm so he wouldn't shoot again. Think
14 about that. Again, we are talking about credibility.
15 He would have this detective believe and now you that
16 he's sitting in the car when all these articles of
17 clothing, two buddies go in, he has no idea why, and
18 then the shooting occurs, and we are talking about a
19 semiautomatic, all you do is pull the trigger.

20 We know that Mr. Blazer
21 comes out the of house. We know when he comes out of
22 the house, it's to the right, there is some hedges, and
23 that we know from the photograph where Mr. Blazer's body
24 landed right there where his feet started, where his
25 slippers are in, in the photograph. And you will see

1 that you. You will see a little area where his head was
2 because there is some blood and brown material there.
3 And this guy would have the detective believe, oh, my
4 God, I heard a couple of shots and I got out of that car
5 and I ran all the way up there to stop that. Folks, you
6 buy that? I don't think so. This guy would have to be
7 the fastest man on earth to do that. How were -- what
8 was the testimony of, I think, Steve Miller again, and
9 his wife as to the clicking how the shots went off.
10 That quick. How in the world is this guy going to have
11 the time to do that? He doesn't. He doesn't have the
12 time. And it didn't happened the way he claimed because
13 you know it did happen the way that Polson and Elofskey
14 said all along.

15 But let's take a look after
16 the chase for a moment. This man, this innocent man, if
17 you believe him, dressed as he was, running over through
18 the yards, over the fences, through the yards, and then
19 is caught again by people having been criticized all day
20 long, that's the police department, caught by Patrolman
21 Jackson and Patrolman Wiesman. And what does he have in
22 his hand at the time that he is caught, you remember
23 that? You have it right here in evidence. A ski mask.
24 A black nylon stocking that the detective, excuse me, it
25 was Patrolman Wiesman said that when he caught this man,

1 he had, I forget which hand, but he had it out in one of
2 his hands and that's, that's where it stayed. It's in
3 the photograph as to where it was specifically
4 recovered. And it's here, right here. And we'll place
5 this right now in front of Mr. Howe.

6 Now, tell me, and you think
7 as you're analyzing this about the theory of their claim
8 that Mr. Howe was just along for the ride to become a
9 fall guy. Folks, the theory is crumbling under its own
10 weight of ridiculousness.

11 Where are the two guns when
12 the police catch up with Polson and not Elofskey, but
13 Howe. Those two guns are in the same yard. And there
14 is pictures of the area where the two red brick
15 apartment buildings face each other. And it's called 42
16 Helena Street. And you saw it. There is not one gun,
17 wherever Elofskey was, not one gun back there by where
18 he left his blue jeans. I'm not setting the gun here.
19 But just imagine the gun right here.

20 They ask where is the
21 physical evidence. I say to you, the physical evidence
22 is now right here in front of Weston Lee Howe, Junior,
23 'cause that's where it belongs, right at his feet. It
24 belongs there because he, like Elofskey and Polson are
25 all in this together. And I submit to you that the